THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.24302 of 2004

DATED:25.10.2007

Between:
A. Balender, S/o.Balnarsaiah

... PETITIONER

And:
The Special Cadre Deputy Registrar/
Officer on Special Duty, Medak District
Co-operative Central Bank Ltd.,
Sangareddy, Medak District and three others.

...**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.24302 of 2004

ORDER:

The petitioner, who is the Proprietor of Om Sai Traders, which is engaged in the business of cement, approached the third respondent for financial assistance and accordingly borrowed a sum of Rs.2,50,000/- with interest @ 20% per annum in the month of August, 1999. Though he paid some instalments as per the terms of the contract, as the business was not that encouraging, he could not pay the balance amount and become a defaulter. Therefore, after issuing a notice as provided for under the provisions of the Andhra Pradesh State Co-operative Societies Act, 1964 (for short 'the Act'), a certificate was issued under Section 71(2) of the Act certifying the amount due by the petitioner.

Be that as it may, it appears that the Andhra Pradesh State Co-operative Bank Limited (APCOB) issued a circular on 04.09.2004 introducing a scheme known as One Time Settlement. According to the said scheme, the persons, who borrowed the amounts and have become defaulters, can give their applications on or before 30.09.2004, so that they will be eligible for the concessions provided for under the said scheme. As per the said scheme, if the borrowers/defaulters pay 25% of the amount due on or before 31.12.2004, they can pay the balance amount within a period of three

months i.e., on or before 31.03.2005 and the interest is calculated @13% per annum as against the agreed interest of 20% fixed at the time of entering into the agreement. The other option is that if the borrowers/defaulters are prepared to pay 50% of the amount due on or before 31.12.2004, they can pay the balance amount within a period of three months i.e., again on or before 31.03.2005 and the rate of interest is calculated only @8% per annum.

It is stated that after receipt of the said circular instructions, the Medak District Co-operative Central Bank Limited issued another circular on 01.10.2004 inviting applications from the eligible borrowers/defaulters. However, the petitioner came to know of the said one time settlement scheme only on 27.10.2004 and hence he could not avail the same. Though he gave representations to the respondents, the respondents expressed their inability stating that the last date for receipt of applications was only 30.09.2004 and as the petitioner had not availed the said opportunity in time, his application cannot be accepted. Hence, he approached this Court and filed the present writ petition.

A detailed counter-affidavit has been filed by the first respondent admitting about the introduction of the said one time settlement scheme. In the counter-affidavit, it is stated that as the petitioner had not come forward before the crucial date i.e., 30.09.2004, the said scheme could not be extended to the petitioner. It is also stated that it is only at the stage when the properties of the petitioner were brought to sale pursuant to the certificate issued under Section 71(2) of the Act, the petitioner approached this Court and filed the present writ petition. It is further stated that the Managing Committee in its meeting dated 06.11.2004 had decided not to extend the said scheme to non-forming sector and waived penal interest.

After hearing both the learned counsel, this Court is of the view that the facts are not at all in dispute. Evidently, one time settlement scheme was introduced by the APCOB only for the benefit of the borrowers, who have become defaulters subsequently and as per the said scheme, the last date for submitting the applications was 30.09.2004. When once the intention of the APCOB is to extend the benefit to its borrowers/defaulters, it should have seen that the said scheme is given wide publicity, so that the eligible borrowers/defaulters would come forward and get themselves benefited by the scheme. Unfortunately, the APCOB introduced the said scheme and circulated the same to all the District Co-operative Central Banks, which in turn issued further circulars on 01.10.2004 addressing the Branch Managers to implement 'One Time Settlement Scheme' for the over dues under Non-Farm Sector Loans and to recover the dues.

From the above, it is clear that though the said scheme was introduced with a good purpose, the same could not be achieved. Further, when the last date for receipt of applications as per the circular was 30.09.2004 issuing another circular by the Medak District Co-operative Central Bank on 01.10.2004 is meaningless and it is not known for what purpose the said circular was issued. Therefore, both the APCOB as well as the Medak District Co-operative Central Bank Limited are at fault in issuing the circulars without understanding the realities as already observed. When it is the intention of the APCOB to extend certain benefits to its borrowers/defaulters, it should have given sufficient time and similarly should have given wide publicity so that the eligible borrowers/defaulters would have come forward and taken advantage of the said scheme. Hence, this Court is of the view that though the circular is introduced with a good purpose for the benefit of

borrowers/defaulters, because of the lapses the same could not be achieved.

No doubt, the petitioner gave the representation on 27.10.2004 and the same is beyond the dead line fixed by the APCOB, but it is not known, how the respondents are justified in not accepting the said application. As discussed above, the petitioner cannot be faulted for not giving application within the time. Had there been sufficient time to the petitioner and similarly placed persons, probably they would have come forward and given their applications in time. Rejecting their applications, without giving sufficient time, stating that they were time barred, in my view, is meaning less. However, had the application been received what is to be done is that the petitioner should have opted for one of those options i.e., payment of 25% or 50% of the amount as certified. But time was there for him to pay the due amount on or before 31.12.2004 and further period of three months for payment of balance amount. As the petitioner approached this Court and filed this writ petition on 21.12.2004 seeking implementation of the said scheme, this Court is of the view that the petitioner can definitely be said to be one of those borrowers, who made applications as per the circular dated 04.09.2004 and therefore, the respondents are directed to treat the petitioner as one of such borrowers, who are eligible for the said scheme and extend the benefits to him as per the said scheme.

At this juncture, the learned counsel for the petitioner submitted that the petitioner is ready to deposit 50% of the amount due so that he is entitled to pay the balance amount with interest @8% per annum.

Accepting the said statement, third and fourth respondents are hereby directed to calculate the amounts due by the petitioner as per one time settlement scheme and inform the petitioner about 50% of the amount that is to be payable by him, within a period of two weeks from

the date of receipt of a copy of this order and on such receipt, the petitioner shall pay the said amount within a period of four weeks thereafter, and the balance amount shall be paid within a period of three months thereafter. For any reason, if the petitioner fails to comply with any of the above conditions, it is open for the respondents to proceed against him, without extending the benefits to him under the scheme.

The writ petition is accordingly disposed of. There shall be no order as to costs.

GOPALA KRISHNA TAMADA,J

Date: 25.10.2007

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